BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585

In the Matter of:	)	
AeroSys, Inc.	)	Case Number: 2011-SCE-1624
(central air conditioners and heat pumps)	)	

AMENDED NOTICE OF

PROPOSED CIVIL PENALTY

Date issued: September 30, 2013

Number of alleged violations: 7,032 violations

Maximum possible assessment: $ 1,406,400

Proposed civil penalty: $ 1,145,600

Summary

On February 15, 2013, the Office of the General Counsel of the U.S. Department of Energy ("DOE") issued a Notice of Proposed Civil Penalty alleging that AeroSys, Inc. ("AeroSys") had violated the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. § 6291 *et seq.*, and 10 C.F.R. Parts 429 and 430. After further consideration of all of the evidence collected during this investigation, DOE issues this Amended Notice of Proposed Civil Penalty. This Amended Notice replaces the February 15, 2013 Notice in its entirety; any allegations or characterizations within the February 15, 2013 Notice are superseded by those within this Amended Notice.

DOE brings this action to enforce regulations requiring manufacturers of products covered by DOE energy conservation standards ("covered products") to submit certification reports to DOE certifying that each basic model of a covered product meets the applicable energy conservation standard(s) before distributing it in U.S. commerce. DOE also brings this action to enforce regulations prohibiting manufacturers from distributing covered products in commerce that do not comply with all applicable energy conservation standards (including distributing products that are the subject of a prior Notice of Noncompliance Determination).

AeroSys has demonstrated a pattern and practice of willful noncompliance with DOE regulatory requirements. Since at least June 2004, AeroSys has been distributing space-constrained central air conditioners and air conditioning heat pumps in U.S. commerce. Despite AeroSys's awareness of DOE compliance and certification requirements, and DOE's substantial efforts since 2008 to obtain compliance, AeroSys has consistently and knowingly violated EPCA and DOE regulations by (1) distributing units of basic models of covered products after certifying to

DOE that such models had been discontinued and that AeroSys would no longer manufacture or distribute those models; (2) distributing basic models of covered products in U.S. commerce without first submitting the required certification reports; (3) submitting certification reports without the required underlying test data; (4) distributing units of basic models after being notified by DOE that the models had been found not to comply with applicable energy conservation standards; and (5) knowingly manufacturing and distributing basic models that were not compliant with the applicable energy conservation standard. Further, in DOE's view, AeroSys has acted in bad faith by providing information that DOE later determined was inaccurate.

On July 18, 2008, after DOE had questioned AeroSys about its certification procedures, AeroSys informed DOE that it had based its certifications on estimates obtained through an unapproved alternate rating method ("ARM"), rather than through testing in accordance with the prescribed DOE test procedure as required under DOE regulations. Rather than follow the test requirements set forth by the DOE, AeroSys had concocted a system of estimation that provided it an illegal shortcut to avoid the costs of compliance that its competitors bore. In January of 2009, DOE alerted AeroSys that it must test its products according to DOE test procedures and that it must identify all the models it had improperly certified as compliant. DOE further informed AeroSys that simulation data may be used to verify compliance with applicable energy conservation standards only if the manufacturer has an approved ARM on file with DOE.

Over the course of the next eighteen months, DOE employed a number of enforcement tools to assess the nature and scope of AeroSys's continuing noncompliance with federal statutes and regulations. Eventually, AeroSys acknowledged certain errors and ostensibly agreed to correct them in two ways. First, on June 4, 2010, AeroSys submitted a notice that it had discontinued manufacture and distribution of 30 basic models and certified the compliance of two other basic models based upon actual testing performed by DOE, at DOE's expense, as part of the ongoing investigation. Second, in July of 2010, DOE and AeroSys reached a compromise agreement in which AeroSys agreed to pay a $25,000 fine for past noncompliance and also agreed to take additional steps to ensure future compliance, including providing test data with any certification submissions.

Unfortunately, AeroSys continued to distribute units of basic models of covered products after certifying to DOE that such models had been discontinued and that AeroSys would no longer manufacture or distribute those models. AeroSys continued to distribute basic models of covered products in U.S. commerce without first submitting the required certification reports, both of which violate DOE regulations. Further, AeroSys failed to live up to the terms of the 2010 compromise agreement by consistently failing to provide underlying test data when submitting certification reports. Finally, AeroSys distributed units of basic models after being notified by DOE that the models had been found not to comply with applicable energy conservation standards and knowingly manufactured and distributed basic models that were not compliant with the applicable energy conservation standards. These compliance failures have required DOE to continue to monitor AeroSys's activities and intervene to enforce compliance with the federal requirements as well as the terms of the compromise agreement.

Further, AeroSys provided false information to DOE. For example, in response to a Test Notice issued by DOE in September 2009, AeroSys informed DOE that it did not have the requisite

As a result, DOE was forced to substitute models subject to the test notice. Based on information supplied by AeroSys and its distributors in response to subpoenas issued during this investigation, DOE has now learned that, after making these assertions in response to the test notice, AeroSys continued to distribute significant numbers of units of the models it claimed not to have.

AeroSys has demonstrated a continuous disregard for the applicable DOE standards and requirements, forcing DOE to expend significant resources in a multi-year effort to enforce compliance with U.S. energy efficiency rules. In doing so, AeroSys prolonged its violations of the law at the expense of its customers, its market competitors, and the environment. DOE brings this action to seek recovery from AeroSys for its pattern of noncompliance, dishonesty, and neglect and to deter both AeroSys and other companies from engaging in such conduct.

Applicable Law

Manufacturers of covered consumer products[1] subject to an applicable energy conservation standard set forth in 10 C.F.R. § 430.32 must submit a certification report to DOE certifying that each basic model of the covered product meets the applicable energy conservation standard(s) prior to distributing the basic model in commerce in the U.S. *See* 10 C.F.R. § 429.12(a).[2] Each certification report must include an attestation that all required testing has been conducted in conformance with the applicable testing requirements. *See* 10 C.F.R. § 429.12(c).

A manufacturer of central air conditioners and central air conditioning heat pumps as defined by 42 § U.S.C. 6291 and 10 C.F.R. § 430.2 must submit a certification report to DOE regarding any new basic model before the manufacturer may distribute the new basic model in commerce.[3] 10 C.F.R. § 429.12(e).[4] These certification requirements have been in effect for manufacturers of space-constrained central air conditioners and central air conditioning heat pumps[5] since March 9, 1989. *See* 54 Fed. Reg. 6081 (Feb. 7, 1989); *see also* 76 Fed. Reg. 12422, 53 (March 7, 2011).[6]

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[1] DOE regulations define a covered product as a consumer product of a type specified in 42 U.S.C. 6292, which includes central air conditioners and central air conditioning heat pumps. *See* 42 U.S.C. §§ 6291(2), 6292(a)(3).

[2] DOE derives its authority to promulgate regulations requiring manufacturers to submit certification reports regarding covered products from 42 U.S.C. § 6296(d)(1).

[3] The term "distribution in commerce" means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce. 42 U.S.C. § 6291(16).

[4] By rule effective July 5, 2011, DOE moved all existing certification, compliance, and enforcement regulations (except those pertaining to electric motors) that were scattered throughout 10 C.F.R. Parts 430 and 431 to a new Part 429. *See* 76 Fed. Reg. 12422, 24 (March 7, 2011). Prior to July 5, 2011, the certification requirements for manufacturers of space-constrained central air conditioners and heat pumps were codified at 10 C.F.R. § 430.62.

[5] Space-constrained central air conditioners and central air conditioning heat pumps are a product class within the broader product category of central air conditioners and central air conditioning heat pumps. Prior to January 3, 2010, space-constrained central air conditioners and central air conditioning heat pumps were regulated under the product class "through-the-wall central air conditioners and central air conditioning heat pumps."

[6] A manufacturer is also required to submit an annual certification report, including a compliance statement, to DOE for each basic model of a covered product the manufacturer distributes in commerce. See 10 C.F.R. § 429.12(d). This annual requirement became effective for manufacturers of space-constrained central air conditioners and

In their certification reports, manufacturers of space-constrained central air conditioners and central air conditioning heat pumps must certify that the basic models they produce meet or exceed the applicable energy conservation standard, termed Seasonal Energy Efficiency Ratio (SEER). Between January 23, 2006, and January 23, 2010, DOE regulations required space-constrained central air conditioners and central air conditioning heat pumps (then considered to fall in the category of through-the-wall air conditioners and heat pumps) to have a minimum efficiency rating of 10.9 SEER. 10 C.F.R. § 430.32(c)(2) and n.1. Since January 23, 2010, the minimum efficiency rating has been 12 SEER. 10 C.F.R. § 430.32(c)(2).

Manufacturers are prohibited from failing "to make reports or provide other information required to be supplied under" 42 U.S.C. Chapter 77 Subchapter III Part A.[7] 42 U.S.C. § 6302(a)(3), 10 C.F.R. § 429.102(a)(1). Failure of the manufacturer to submit certification reports as required under 10 C.F.R. § 429.12 constitutes a prohibited act under 10 C.F.R. § 429.102,[8] punishable by civil penalty pursuant to 10 C.F.R. § 429.120.[9] Each day of noncompliance constitutes a separate violation for each basic model at issue, and each such violation is subject to a maximum penalty of $200 (two hundred dollars).[10] 42 U.S.C. § 6303 and 10 C.F.R. § 429.120.

A manufacturer of space-constrained central air conditioners and central air conditioning heat pumps must base its certification of compliance either: (a) on actual testing of at least two units of the same basic model conducted in accordance with the applicable DOE test procedure set forth in 10 C.F.R. Part 430, Subpart B, Appendix M; or (b) through use of an alternate rating method ("ARM") that has been approved by DOE in accordance with the provisions of 10 C.F.R. § 429.70(e)(1) and (2). 10 C.F.R. § 429.16(a).[11]

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central air conditioning heat pumps on July 5, 2011. Certification reports for central air-conditioning heat pumps must be submitted to DOE by July 1st of each year.

[7] Part A of 42 U.S.C. Chapter 77 Subchapter III includes 42 U.S.C. § 6296(d)(1).

[8] DOE has made clear that "improperly certifying a covered product" such as through submission of an inaccurate report or a report that is not in accordance with the DOE requirements for determining a product's efficiency, also constitutes a prohibited act. 74 Federal Register 52793, 52794 (Oct. 14, 2009).

[9] DOE derives its authority to impose civil penalties for failure to submit required certification reports from 42 U.S.C. § 6302(a)(3) and 42 U.S.C. § 6303(a).

[10] DOE described this approach in its 2010 Notice of Proposed Rulemaking for Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment. *See* 75 FR 56796 (Sept 16, 2010). In the preamble, DOE explained, "For certification requirement violations, per statutory authority and DOE guidance, the Department will calculate penalties based on each day a manufacturer distributes each basic model in commerce in the United States without having submitted a certification report." 75 FR at 56805. DOE reiterated this interpretation in adopting the Final Rule. *See* 76 FR 12422, 12441 (Mar 7, 2011). DOE's statutory authority for this approach is found at 42 U.S.C. § 6302(a).

[11] Prior to July 5, 2011, the provisions regarding ARMs were found at 10 C.F.R § 430.24.

When a manufacturer has ceased production of a basic model and is no longer offering the basic model for sale in the U.S., the manufacturer must report the basic model's discontinued status to DOE as part of its next annual certification report. 10 C.F.R. § 429.12(f).[12] Once a manufacturer has certified a basic model to DOE as discontinued, the manufacturer may not distribute the basic model in commerce in the U.S. until the model has subsequently been certified with DOE as compliant with applicable energy conservation standards pursuant to 10 C.F.R. § 429.12.

Allegations

History of Past Certification Violations

1. AeroSys manufactures and distributes, and has manufactured and distributed since at least June 2004, basic models of space-constrained central air conditioners and central air conditioning heat pumps.
2. AeroSys first attempted to certify basic models of space-constrained central air conditioners and central air conditioning heat pumps on March 6, 2006. (Exhibit 1.) In that submission, AeroSys specifically stated, "All analyses on which the certifications are based were conducted in conformance with the applicable test requirements prescribed in 10CFR part B. [*sic*]"[13] In the submission, AeroSys attempted to certify nine space-constrained 10.9 SEER central air conditioner basic models and nine space-constrained 10.9 SEER central air conditioning heat pump basic models (listed in the charts below).

Space-constrained 10.9 SEER Central Air Conditioner Basic Models included in the 2006 Certification Submission		
THDC-18R	THDC-24R	THDC-30R
THDC-18S	THDC-24S	THDC-30S
THDC-18T	THDC-24T	THDC-30T

Space-constrained 10.9 SEER Central Air Conditioning Heat Pump Basic Models included in the 2006 Certification Submission		
THHP-18R	THHP-24R	THHP-30R
THHP-18S	THHP-24S	THHP-30S
THHP-18T	THHP-24T	THHP-30T

[12] Prior to April 6, 2011, a manufacturer was required to notify DOE at the time production of a basic model had ceased and was no longer being distributed; the manufacturer could include that information in a certification report if the reporting of discontinuance coincided with the submission of a certification report but otherwise could not wait to report this discontinuance at a later time. (*See* 63 Fed. Reg. 13308, 13320 (Mar. 18, 1998).)

[13] The test procedure for space-constrained central air conditioners and central air conditioning heat pumps is found within 10 C.F.R. Part 430, Subpart B.

3. At the time of that submission, AeroSys did not have a DOE-approved ARM. DOE regulations therefore required AeroSys to submit a certification report regarding any basic models it distributed in U.S. commerce based upon actual testing performed in accordance with DOE test procedures.

4. In 2008, DOE received a complaint regarding the veracity of AeroSys's representations of the efficiency of one basic model of its space-constrained central air conditioning heat pumps. In response to this complaint, on June 27, 2008, DOE requested AeroSys provide the test data underlying the certification of that specific space-constrained central air conditioning heat pump basic model. (Exhibit 2.)

5. AeroSys responded on July 18, 2008, and explained that its certification was based on estimations obtained through the use of an unapproved ARM. (Exhibit 3.) AeroSys also provided DOE the simulation data relied upon to certify the efficiency of the space-constrained central air conditioning heat pump DOE identified in its June 27, 2008 letter to AeroSys.

6. On January 22, 2009, DOE informed AeroSys that, as AeroSys had not submitted an ARM to DOE for approval, it must use laboratory testing in accordance with DOE test procedures for all of its ratings represented in its certification reports. (Exhibit 4.) In this same letter, DOE requested AeroSys provide the test data upon which it had based its certification of each of the 18 basic models AeroSys had certified as compliant with the applicable energy efficiency standards in its March 6, 2006 submission. DOE further asked that AeroSys specifically identify any basic models that were certified based upon estimations obtained from an ARM rather than actual testing.

7. In its response dated February 13, 2009, AeroSys stated that it used "three methods for establishing the performance of its units. The base line for the validity of the final performance is based upon the correlation of theoretical projections through computer analyses and actual empirical testing ... ." (Exhibit 5.) Based on information provided by AeroSys in this response, the "actual empirical testing" was a single test of one basic model of an AeroSys space-constrained central air conditioner that it used to correlate its computer simulation. The other two methods were estimations of each model's performance based upon the use of two different modeling software packages.

8. In a follow-up meeting on February 24, 2009, AeroSys agreed to provide DOE by March 31, 2009, with complete certification test data for all the covered products it manufactured. This deadline was extended at AeroSys's request to April 15, 2009. AeroSys failed to provide any test data by the extended deadline. When AeroSys instead provided test data to DOE on April 19, 2009, DOE found that it was insufficient in that, as explained by AeroSys, most of the submitted data was based upon simulations rather than actual testing. (Exhibit 9.) Of note, some of the non-simulation based test data submitted to DOE by AeroSys was based on testing that had been performed after the initial March 31, 2009 deadline and well after AeroSys had submitted its 2006 certification report.

9. AeroSys submitted a "Compliance Statement and Certification Report" (Exhibit 6) on April 30, 2009. In this one-page submission, AeroSys listed the product it was certifying as "thru-the wall condensing units (THDC series)."[14] Unlike its previous submission from 2006, AeroSys did not provide basic model numbers or efficiency ratings for the basic models within the THDC series. AeroSys did not attempt to certify any THHP series basic models of space-constrained central air conditioning heat pumps in this submission.

10. On June 30, 2009, AeroSys submitted a request for DOE approval of an ARM along with test data to support the ARM. The test data submitted with the request indicated that many of the tests were not valid, as the tested units failed to remain within the required test tolerances. As such, DOE rejected this request in a letter dated September 3, 2009, because AeroSys did not meet the ARM submittal requirements. (Exhibit 7.) In this letter, DOE again informed AeroSys that certifications based on an unapproved ARM were invalid. AeroSys chose not to submit any new certification submissions in response to this notice.

11. In response to AeroSys's failure to provide complete information regarding its certifications as requested by DOE on multiple occasions, DOE served a subpoena on AeroSys on July 23, 2009.[15] (Exhibit 8.)

12. AeroSys responded to the subpoena though its counsel on August 26, 2009. (Exhibit 9.) The subpoena response made clear that AeroSys had based its SEER representations upon data obtained from the use of an unapproved ARM. Although AeroSys claimed to have tested five different basic models once (THDC-18R, THDC-18T, THDC-24S, THDC-24TG, and THDC-30R) and one basic model twice (THDC-24T),[16] it only provided test results from one test of three different models (THDC-18R, THDC-18T, and THDC-24T).

13. On September 24, 2009, DOE sent AeroSys a Test Notice.[17] (Exhibit 10.) In the notice, DOE reminded AeroSys that it could not use an unapproved ARM as the basis for certifying the compliance of its products. After receiving this reminder, AeroSys chose not to submit any new certification submissions based upon actual testing.

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[14] As noted earlier, this type of product is now referred to as a space-constrained central air conditioner.

[15] The subpoena required, in part, that AeroSys provide the test data that formed the basis of its attempted certification of its products. At the time AeroSys conducted its testing, as well as when DOE issued the subpoena, 10 C.F.R. 430.62 made clear that manufacturers were required to maintain supporting test data on any tested units for at least two years after production of the model had ceased and must make these records available to DOE upon request. These requirements are currently found at 10 C.F.R. § 429.71.

[16] AeroSys has never provided data substantiating that the THDC-24T was tested twice.

[17] A Test Notice provides notice to a manufacturer that DOE has decided to test units of specified models of a manufacturer's products in order to determine the models' compliance with federal energy conservation standards. *See* 10 C.F.R § 429.110. At the time this test notice was issued, the test notice requirements for space-constrained central air conditioners and heat pumps were codified at 10 C.F.R § 430.70(a).

14. On November 16, 2009, DOE requested that AeroSys clarify some of the information provided in the subpoena response. (Exhibit 11.) This follow-up request was necessary because "there are certain pieces of information that AeroSys did not furnish in its response..." AeroSys responded to the request for clarification on December 2, 2009. (Exhibit 12.)

15. On January 26, 2010, DOE sent AeroSys a request for "all test data underlying AeroSys' SEER ratings" of 12 specified basic models of space-constrained central air conditioners. (Exhibit 13.) The models specified in this notice constituted all of the models included within AeroSys's "THDC" product line, which it had attempted to certify through its submission on April 30, 2009.

16. AeroSys responded to DOE's January 26, 2010 request on February 16, 2010. (Exhibit 14.) In its response, AeroSys once again described its system for determining the energy efficiency of its products that was not consistent with federal law and had been explicitly rejected by DOE several months earlier. It provided the results of testing of a single unit of one model of its products, and the efficiency of the remaining models as determined using an unapproved ARM. This was over one year after DOE informed AeroSys that absent an approved ARM, which AeroSys did not have, manufacturers must base all certifications on actual, empirical testing.

17. On February 3, 2010, DOE issued AeroSys a Notice of Proposed Civil Penalty (hereinafter referred to as "2010 NPCP" and attached as Exhibit 15) for failure to submit valid certification reports for twelve basic models of space-constrained central air conditioners and nine basic models of space-constrained central air conditioning heat pumps (listed in the charts below) that AeroSys sold and/or distributed in commerce in the U.S. The 2010 NPCP indicated that the basic models identified had been in commerce for at least 730 days. For each basic model identified in the 2010 NPCP, AeroSys either failed to submit a certification report or submitted an invalid report. The report was considered invalid because the data in the report was based either on (a) estimations obtained through the use of the company's unapproved ARM or (b) testing of a single unit.

Space-constrained 10.9 SEER Central Air Conditioner Basic Models Subject to the 2010 NPCP		
THDC-18P	THDC-24P	THDC-30P
THDC-18R	THDC-24R	THDC-30R
THDC-18S	THDC-24S	THDC-30S
THDC-18T	THDC-24T	THDC-30T

Space-constrained 10.9 SEER Central Air Conditioning Heat Pump Basic Models Subject to the 2010 NPCP		
THHP-18R	THHP-24R	THHP-30R
THHP-18S	THHP-24S	THHP-30S
THHP-18T	THHP-24T	THHP-30T

18. On February 15, 2010, AeroSys submitted a second request for DOE approval of an ARM. DOE rejected this second request on March 29, 2010. (Exhibit 16.) DOE's letter once again informed AeroSys that certification reports regarding any basic models it had submitted based on an unapproved ARM were invalid. As before, after receiving this reminder, AeroSys chose not to submit any new certification submissions based upon actual testing.

19. DOE issued AeroSys an Amended Notice of Proposed Civil Penalty on March 2, 2010 (hereinafter referred to as "2010 Amended NPCP" and attached as Exhibit 17.) The 2010 Amended NPCP added the below listed eight basic models of space-constrained central air conditioners that were not included in the first NPCP.

Space-constrained 10.9 SEER Central Air Conditioner Basic Models added in the 2010 Amended NPCP	
THDC-18PG	THDC-24PG
THDC-18RG	THDC-24RG
THDC-18SG	THDC-24SG
THDC-18TG	THDC-24TG

20. DOE issued Notices of Noncompliance Determination (Exhibits 18 and 19) on March 25 and April 13, 2010, based upon DOE's testing of several models of AeroSys's products pursuant to the Test Notice issued on September 24, 2009. Within the April 13, 2010 notice, DOE reminded AeroSys that "AeroSys has not properly certified as complying with the applicable energy conservation standard any of its air conditioners, including the SEER 10.9 models that use R-22 refrigerant, and the SEER 10.9 and SEER 12 models that use R-410A refrigerant."[18]

21. On May 6, 2010, DOE sent a letter to AeroSys's counsel (Exhibit 20) noting that AeroSys still had not submitted a valid certification report regarding *any* models of space-constrained central air conditioners and central air conditioning heat pumps. In particular, DOE again informed AeroSys (through its counsel) that, in accordance with the applicable statutes and regulations, AeroSys could not base its certification reports on testing a single unit or through the use of an unapproved ARM.

[18] In AeroSys's nomenclature, basic model numbers ending in "G" or "GA" use R-410A refrigerant (e.g., THDC-24TG), whereas basic model numbers not ending in "G" or "GA" use R-22 refrigerant (e.g., THDC-24T).

22. On June 4, 2010, AeroSys submitted a Certification of Compliance and a Notice of Discontinuance (Exhibit 21) to DOE. The notice stated, in part, that AeroSys had "discontinued manufacture and distribution" of 12 basic models of 10.9 SEER space-constrained central air conditioners and 18 basic models of space-constrained central air conditioning heat pumps (listed in the charts below). The Notice included all 12 basic models of space-constrained central air conditioners and nine basic models of space-constrained central air conditioning heat pumps that had been identified in the 2010 NPCP and 2010 Amended NPCP. The list also contained nine additional basic models of space-constrained central air conditioning heat pumps that AeroSys had never attempted to certify as compliant with applicable energy efficiency standards and had not been included in the 2010 NPCP or 2010 Amended NPCP.[19]

Space-constrained 10.9 SEER Central Air Conditioner Basic Models Listed in the June 4, 2010 Notice of Discontinuance		
THDC-18P	THDC-24P	THDC-30P
THDC-18R	THDC-24R	THDC-30R
THDC-18S	THDC-24S	THDC-30S
THDC-18T	THDC-24T	THDC-30T

Space-constrained 10.9 SEER Central Air Conditioning Heat Pump Basic Models listed in the June 4, 2010 Notice of Discontinuance		
THHP-18R	THHP-24R	THHP-30R
THHP-18S	THHP-24S	THHP-30S
THHP-18T	THHP-24T	THHP-30T
THHP-18RG*	THHP-24RG*	THHP-30RG*
THHP-18SG*	THHP-24SG*	THHP-30SG*
THHP-18TG*	THHP-24TG*	THHP-30TG*

*Not identified in the 2010 NPCP or 2010 Amended NPCP.

23. AeroSys's June 4, 2010 submission also stated that AeroSys was certifying two basic models of space-constrained central air conditioners as compliant with the standard that had been in effect at the time the units of the models were manufactured.[20] DOE considered these to be AeroSys's first valid certification of any of its basic models, as the

[19] DOE did not consider any of these thirty models to have been previously certified as compliant with the applicable energy conservation standard because all prior representations of their efficiency were based either on (a) estimations obtained through the use of an unapproved ARM or (b) testing of a single unit.

[20] Because these models were certified as compliant with the standard in effect before January 23, 2010 (10.9 SEER), but not the standard currently in place at the time of the submission (12 SEER), AeroSys was not authorized to manufacture additional units of these models, but could sell existing stock after the effective date of the newer standard.

certifications were based upon testing of two units of each model performed by DOE in accordance with the DOE test procedure.[21]

Space-constrained 10.9 SEER Central Air Conditioner Basic Models Certified as Compliant on June 4, 2010	
THDC-18TG	THDC-24TG

Settlement of Past Certification Violations

24. On July 1, 2010, DOE and AeroSys entered into a Compromise Agreement (hereinafter referred to as the "2010 Compromise Agreement" and attached as Exhibit 22) by which the parties intended to settle the occurrences or events identified or alleged in the 2010 Amended NPCP, as well as in the Notices of Noncompliance Determination issued on March 25 and April 13, 2010.

25. On July 2, 2010, the General Counsel of DOE signed an Adopting Order (hereinafter referred to as "2010 Adopting Order" and attached as Exhibit 23) adopting the terms of the compromise agreement, which included specific performance requirements and also assessed a civil penalty against AeroSys.

26. As part of the 2010 Compromise Agreement, AeroSys agreed in section V.2 that "For three years following the date of Adopting Order, AeroSys will not certify any basic model without providing complete test data to DOE."[22] AeroSys further agreed in section V.3, "AeroSys will not distribute in commerce any model until a certification report and compliance statement is submitted to DOE which shows the model complies with the applicable energy conservation standard in 10 CFR Part 430."

27. Pursuant to the 2010 Compromise Agreement, AeroSys and an independent third-party test facility each tested two units of each of four basic models of AeroSys space-constrained central air conditioners.[23] The purposes of the independent third-party lab testing were to (1) establish a basis for possible certification of the compliance of these four models, (2) determine the compliance or noncompliance of these particular models

[21] The test results had been provided to AeroSys by DOE from enforcement testing initiated by the Test Notice issued on September 24, 2009. During that same testing, DOE had found that basic model numbers THDC-24SG, THDC-30TG, and THHP-24TG were not compliant. DOE further found that the test results were inconclusive for the basic model numbers THDC-18RG and THDC-18SG. In the April 13, 2010 Notice of Noncompliance Determination, DOE requested additional units for further testing of these models but was told by AeroSys that there were no more units in stock. DOE did not pursue additional testing of these models because AeroSys stated it had ceased distribution. Accordingly, DOE never determined whether they complied with the applicable federal energy conservation standard.

[22] The compromise agreement further specified what constituted "complete test results" in attachment B. It was the DOE's expectation that the test data submitted by AeroSys would meet these minimum criteria.

[23] The basic models selected were the THDC-18S, THDC-18T, THDC-24S and THDC-24T. AeroSys had listed all of these basic models as discontinued in its June 4, 2010 certification submission.

with the 10.9 SEER standard that had been in place when they were manufactured,[24] and (3) establish the basis for determining the accuracy of testing performed at AeroSys's facility. The results of testing at AeroSys's lab would be compared to the test results obtained from the third-party test facility to determine the accuracy of the testing at AeroSys's lab.

28. On December 15, 2011, DOE issued a Notice (Exhibit 24) stating that AeroSys's test results failed to correlate with those of the third-party testing facility within the requirements agreed to in the Compromise Agreement. Under the Compromise Agreement, if the results of testing conducted at AeroSys did not sufficiently correlate to the results from testing at the independent third-party test facility, then AeroSys could not rely on in-house testing to certify its models as compliant with applicable standards. As a result, under the terms of the Compromise Agreement, AeroSys was required to base any certification reports submitted to DOE regarding any of its covered products on testing conducted by an independent third-party test lab for three years.

Certifications submitted by AeroSys[25] since July 2, 2010

29. Between July 23, 2010, and January 21, 2011, AeroSys submitted[26] certifications for the below listed 12.0 SEER basic models on the dates listed. (Exhibits 25-26.) AeroSys provided the test data underlying its certifications on the dates listed in the chart. (Exhibits 27-33). The underlying test data was not submitted at the same time as the certifications for any of these models.

Basic Model Number	Date Certification Submitted	Date Test Data Submitted
THDC-24SG	7/23/10	8/6/10
THDC-24TG	7/23/10	8/6/10
THDC-18RG	1/21/11	10/12/11
THDC-18TG	1/21/11	2/23/11
THDC-24RG	1/21/11	4/5/11
THDC-18SG	1/21/11	4/5/11
THDC-30RG	1/21/11	4/5/11
THDC-30SG	1/21/11	2/23/11

[24] After testing, DOE determined that all four models failed to meet the 10.9 SEER energy conservation standard in effect until January 23, 2010, and applicable to the tested basic models. DOE issued a Notice of Noncompliance Determination for each of these models on September 27, 2011.

[25] Some of the certifications of the basic models were submitted by the Air-Conditioning, Heating, and Refrigeration Institute ("AHRI") as a third party representative on behalf of AeroSys. This practice is allowed pursuant to 10 C.F.R. § 429.12(g).

[26] AeroSys (and AHRI acting on its behalf) has since resubmitted certifications for many of these basic models.

30. On February 1, 2011, DOE reminded AeroSys via email of the need to submit test data underlying its certifications.[27] (Exhibit 34.) On February 4, 2011, DOE again reminded AeroSys via email of the need to submit test data underlying its certifications.[28] (Exhibit 35.) (As shown in the chart above, AeroSys had submitted certifications for eight different basic models at that time but had failed to submit test data underlying six of the certifications, in violation of the 2010 Compromise Agreement.) In this email, DOE told AeroSys that basic models THDC-18RG, THDC-18SG, THDC-18TG, THDC-24RG, THDC-30RG, and THDC-30SG were not considered certified until that data was submitted.

31. Between April 22, 2011, and May 18, 2011, AeroSys submitted[29] certifications for the below listed 12.0 SEER basic models on the date listed. (Exhibits 36-37.) AeroSys provided the test data underlying its certifications on the dates listed in the chart below. (Exhibits 28, 38-40). While the test data for three of these models was provided as required at the time of the certification submission, the underlying test data was not provided with the certification for one of these models until nearly six months after the certification submission.

Basic Model Number	Date Certification Submitted	Date Test Data Submitted
THDC-30PG	4/22/11	4/19/11
THDC-30TG	4/22/11	10/12/11
THDC-18PG	5/18/11	5/18/11
THDC-24PG	5/18/11	5/18/11

32. DOE issued AeroSys a Warning Notice on September 27, 2011, once again reminding AeroSys of the need to submit test data underlying its certifications. (Exhibit 41.) At the time of this reminder, AeroSys had still failed to provide any data for two models (THDC-18RG and THDC-30TG) they had attempted to certify.

33. After receiving the Warning Notice, AeroSys submitted certification reports for the below listed basic models on the dates listed. (Exhibits 42-52). AeroSys provided the test data underlying the certifications for each of these basic models on the date listed in the chart below. (Exhibits 53-69).

[27] DOE also informed AeroSys that the data it had submitted for the THDC-24SG and THDC-24TG on August 6, 2010, was incomplete and failed to satisfy the conditions laid out in the 2010 Compromise Agreement.

[28] Once again, DOE also informed AeroSys that the data it had submitted on August 6, 2010, was incomplete and failed to satisfy the conditions laid out in the 2010 Compromise Agreement.

[29] AeroSys has since resubmitted certifications for many of these basic models.

Basic Model Number	Date Certification Submitted	Date Test Data Submitted
THHP-30TG	10/13/11	*2/2/12*[30]
THHP-24TGA	12/9/11	2/2/12
THDC-18TGA	1/20/12	2/2/12
THDC-30TGA	1/20/12	2/2/12
THHP-30TGA	1/22/12	2/2/12
THHP-18SGA	1/23/12	*Never*[31]
THHP-18TGA	1/23/12	3/6/12
THHP-24SGA	1/23/12	3/1/12
THHP-30SGA	1/23/12	2/2/12
THDC-30RGA	1/26/12	2/2/12
THDC-24TGA	2/1/12	2/2/12
THDC-30SGA	2/1/12	2/2/12
THDC-18SGA	2/2/12	2/2/12
THDC-24PGA	2/5/12	2/7/12
THDC-24SGA	2/5/12	2/6/12
THDC-18PGA	2/8/12	2/8/12
THDC-30PGA	2/8/12	2/9/12
THDC-18RGA	2/13/12	2/13/12
THDC-24RGA	2/13/12	2/13/12

Investigation into Distribution of Basic Models

34. On December 8, 2011, DOE issued a subpoena (hereinafter referred to as "2011 Subpoena" and attached as Exhibit 70) to AeroSys requesting, among other things, information and documents related to each model of space-constrained product that AeroSys "... manufactured (includes importation), privately labeled, branded or submitted a certification report on or after August 1, 2010", including space-constrained central air conditioners and central air conditioning heat pumps.

35. Between December 15, 2011, and February 3, 2012, DOE served subpoenas on seventeen distributors of AeroSys space-constrained products. The subpoenas requested information and documents related to each model of space-constrained product, including space-constrained central air conditioners and space-constrained central air conditioning heat pumps, manufactured by AeroSys and then purchased by the distributors since January 1, 2010.

[30] On October 25, 2011, AeroSys notified DOE that they would be renaming all 12 SEER "TG" models as "TGA" models to distinguish them from the 10.9 SEER models of the same numbers. AeroSys further stated that it would resubmit all certifications for all its basic models based upon the new names. The data submitted for basic model THHP-30TGA on February 2, 2012, would therefore have been responsive to the requirement to provide data for the THHP-30TG, for which no data was ever submitted.

[31] On September 5, 2012, more than seven months after submitting a certification report without any test data, AeroSys submitted a notice discontinuing this model. AeroSys never provided data for this model.

36. In the responses to the subpoenas served on the distributors of AeroSys space-constrained products, DOE received numerous "All Unit Price Books" sent by AeroSys to its buyers. In one (Exhibit 71), ten models of space-constrained central air conditioning heat pumps are offered for sale effective February 15, 2010.[32] In another price book, effective September 9, 2011 (Exhibit 72), AeroSys offered for sale six models of heat pumps. AeroSys did not submit a valid certification for any of these heat pumps until 2012.

Violation 1: Distribution of Models Claimed to be Discontinued and Never Certified

37. Since June 4, 2010 (the date of the Notice of Discontinuance), AeroSys distributed units of a number of basic models of space-constrained central air conditioners and central air conditioning heat pumps in commerce after notifying DOE that it had "discontinued manufacture and distribution" of these models. AeroSys never submitted a valid certification report to DOE for any of these basic models, either before or after discontinuing them. Distribution of these basic models without prior certification of compliance was in direct violation of section V.3 of the 2010 Compromise Agreement. Distribution without prior certification also constituted a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1), punishable by a maximum penalty of $200 per day per basic model offered for sale as described in 10 C.F.R. § 429.120.

Model	SEER	Date of Last Known Sale	Days Non-Compliant[33]	Maximum Penalty[34]
THDC-18P	10.9	7/27/2010	53	$10,600
THDC-18R	10.9	3/17/2011	286	$57,200
THDC-18S	10.9	6/7/2011	368	$73,600
THDC-18T	10.9	2/28/2011	269	$53,800
THDC-18RG	10.9	6/8/2010	4	$800
THDC-18SG	10.9	6/9/2010	5	$1,000
THDC-18TG	10.9	7/21/2010	47	$9,400
THDC-24P	10.9	1/26/2011	236	$47,200
THDC-24R	10.9	8/7/2011	429	$85,800
THDC-24S	10.9	3/28/2011	297	$59,400
THDC-24T	10.9	5/6/2011	336	$67,200
THDC-24TG	10.9	7/16/2010	42	$8,400
THDC-30P	10.9	8/20/2010	77	$15,400
THDC-30R	10.9	8/6/2010	63	$12,600
THDC-30T	10.9	3/17/2011	286	$57,200
THDC-30TG	10.9	8/3/2010	60	$12,000

[32] The models offered for sale with prices effective February 15, 2010, include THHP-18R, THHP-18S, THHP-18T, THHP-24R, THHP-24S, THHP-24T, THHP-30R, THHP-30S, THHP-30T, and THHP-36T.

[33] The days noncompliant were calculated from the date of the Notice of Discontinuance, June 4, 2010.

[34] Each day of noncompliance constitutes a separate violation for each basic model at issue. Each violation is subject to a maximum penalty of $200. 42 U.S.C. § 6303 and 10 C.F.R. § 429.120.

Model	SEER	Date of Last Known Sale	Days Non-Compliant[33]	Maximum Penalty[34]
THHP-18T	10.9	7/8/2010	34	$6,800
THHP-24R	10.9	7/1/2010	27	$5,400
THHP-24S	10.9	3/11/2011	280	$56,000
THHP-24T	10.9	2/25/2011	266	$53,200
THHP-30S	10.9	4/26/2011	326	$65,200
THHP-30T	10.9	7/8/2010	34	$6,800
Totals:			**3,825**	**$765,000**

38. **Model THDC-18P**. AeroSys distributed at least two units of space-constrained central air conditioner basic model THDC-18P between June 5, 2010, and July 27, 2010.

    a. AeroSys distributed one unit of this model to Allied Equipment & Supply Inc. ("Allied") on or about June 30, 2010. This was almost one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed one unit of this model to Aireco Supply, Inc. on or about July 27, 2010. This was approximately two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and only about three weeks after the 2010 Compromise Agreement.

    c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

39. **Model THDC-18R**. AeroSys distributed at least one unit of space-constrained central air conditioner basic model THDC-18R to Hamilton Air Inc. ("Hamilton") on or about March 17, 2011. This was over eleven months after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and over ten months after the 2010 Compromise Agreement. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

40. **Model THDC-18S**. AeroSys distributed at least four units of space-constrained central air conditioner basic model THDC-18S between June 5, 2010, and June 7, 2011.

    a. AeroSys distributed two units of this model to Northeastern Supply Inc. ("Northeastern") on or about May 17, 2011. This was over eleven months after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and over ten months after the 2010 Compromise Agreement.

    b. AeroSys distributed two units of this model to Vair Corporation ("Vair") on or about June 7, 2011. This was approximately one year after AeroSys filed its June 4, 2010 Notice of Discontinuance and over eleven months after the 2010 Compromise Agreement.

    c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

41. **Model THDC-18T**. AeroSys distributed at least five units of space-constrained central air conditioner basic model THDC-18T between June 5, 2010, and February 28, 2011.

    a. AeroSys distributed one unit of this model to Johnstone Supply ("Johnstone") on or about June 16, 2010. This was less than two weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed two units of this model to Young Supply ("Young") on or about June 17, 2010. This was less than two weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance.

    c. AeroSys distributed two units of this model to Trible's, Inc. ("Trible's") on or about February 28, 2011. This was over seven months after AeroSys filed its June 4, 2010 Notice of Discontinuance and the 2010 Compromise Agreement.

    d. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

42. **Model THDC-18RG**. AeroSys distributed at least two units of space-constrained central air conditioner basic model THDC-18RG to ABCO Refrigeration Supply Corp. ("ABCO") on or about June 8, 2010. This was four days after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

43. **Model THDC-18SG**. AeroSys distributed at least 22 units of space-constrained central air conditioner basic model THDC-18SG to NB Handy Company ("Handy") on or about June 9, 2010. This was five days after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model. As of the date of this known last sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

44. **Model THDC-18TG**. AeroSys distributed at least 13 units of space-constrained central air conditioner basic model THDC-18TG between June 5, 2010, and July 21, 2010.

    a. AeroSys distributed one unit of this model to ABCO on or about July 1, 2010. This was less than one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed six units of this model to Ferguson Enterprises, Inc. ("Ferguson") on or about July 9, 2010. This was approximately one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and over one week after the 2010 Compromise Agreement.

    c. AeroSys distributed six units of this model to Handy on or about July 21, 2010. This was more than one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost three weeks after the 2010 Compromise Agreement.

    d. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

45. **Model THDC-24P**. AeroSys distributed at least eight units of space-constrained central air conditioner basic model THDC-24P between June 5, 2010, and January 26, 2011.

    a. AeroSys distributed one unit of this model to Allied on or about July 14, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and almost two weeks after the 2010 Compromise Agreement.

    b. AeroSys distributed three units of this model to ABCO on or about August 20, 2010. This was almost three months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost two months after the 2010 Compromise Agreement.

    c. AeroSys distributed three units of this model to the American/Universal Supply Division of RAL Supply Group Inc. ("American/Universal") on or about December 23, 2010. This was over six months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost six months after the 2010 Compromise Agreement.

    d. AeroSys distributed one unit of this model to Johnstone on or about January 26, 2011. This was almost eight months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost seven months after the 2010 Compromise Agreement.

    e. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

46. **Model THDC-24R**. AeroSys distributed at least seven units of space-constrained central air conditioner basic model THDC-24R between June 5, 2010, and August 7, 2011.

    a. AeroSys distributed two units of this model to Sid Harvey Industries, Inc. ("Sid Harvey") on or about July 27, 2011. This was over one year after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and the 2010 Compromise Agreement.

    b. AeroSys distributed five units of this model to Young on or about August 11, 2011. This was over one year after AeroSys filed its June 4, 2010 Notice of Discontinuance and the 2010 Compromise Agreement.

    c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

47. **Model THDC-24S**. AeroSys distributed at least six units of space-constrained central air conditioner basic model THDC-24S between June 5, 2010, and March 28, 2011.

    a. AeroSys distributed one unit of this model to Carrier Enterprise Northeast LLC ("Carrier") on or about August 9, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and the 2010 Compromise Agreement.

    b. AeroSys distributed five units of this model to Vair on or about March 28, 2011. This was over eight months after AeroSys filed its June 4, 2010 Notice of Discontinuance and the 2010 Compromise Agreement.

c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

48. **Model THDC-24T**. AeroSys distributed at least 18 units of space-constrained central air conditioner basic model THDC-24T between June 5, 2010, and May 6, 2011.

    a. AeroSys distributed one unit of this model to Johnstone on or about June 11, 2010. This was one week after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed one unit of this model to Allied on or about October 7, 2010. This was over four months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over three months after the 2010 Compromise Agreement.

    c. AeroSys distributed one unit of this model to Southern Refrigeration Corporation ("Southern") on or about March 9, 2011. This was over nine months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over eight months after the 2010 Compromise Agreement.

    d. AeroSys distributed fifteen units of this model to The Portland Group on or about May 6, 2011. This was over eleven months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over ten months after the 2010 Compromise Agreement.

    e. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

49. **Model THDC-24TG**. AeroSys distributed at least six units of space-constrained central air conditioner basic model THDC-24TG between June 8, 2010, and July 16, 2010.

    a. AeroSys distributed three units of this model to ABCO on or about June 8, 2010. This was four days after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed two units of this model to Luce, Schwab, and Kase, Inc. ("LSKAir") on or about June 9, 2010. This was five days after AeroSys filed its June 4, 2010 Notice of Discontinuance.

    c. AeroSys distributed one unit of this model to Trible's, Inc. ("Trible's") on or about July 16, 2010. This was five days after AeroSys filed its June 4, 2010 Notice of Discontinuance.

    d. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

50. **Model THDC-30P**. AeroSys distributed at least four units of space-constrained central air conditioner basic model THDC-30P between June 5, 2010, and August 20, 2010.

    a. AeroSys distributed two units of this model to Carrier on or about August 19, 2010. This was over two months after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and over one month after the 2010 Compromise Agreement.

b. AeroSys distributed two units of this model to ABCO on or about August 20, 2010. This was over two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over one month after the 2010 Compromise Agreement.

c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

51. **Model THDC-30R**. AeroSys distributed at least eleven units of space-constrained central air conditioner basic model THDC-30R between June 5, 2010, and August 6, 2010.

a. AeroSys distributed two units of this model to Central Wholesalers, Inc. ("Central") on or about July 13, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and over one week after the 2010 Compromise Agreement.

b. AeroSys distributed one unit of this model to Northeastern on or about July 15, 2010. This was almost six weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance and eleven days after the 2010 Compromise Agreement.

c. AeroSys distributed three units of this model to Central on or about July 19, 2010. This was over six weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance and over two weeks after the 2010 Compromise Agreement.

d. AeroSys distributed one unit of this model to Tropic Supply, Inc. ("Tropic") on or about July 27, 2010. This was almost two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over three weeks after the 2010 Compromise Agreement.

e. AeroSys distributed three units of this model to ABCO on or about August 4, 2010. This was two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over one month after the 2010 Compromise Agreement.

f. AeroSys distributed one unit of this model to Wittichen Supply, Inc. ("Wittichen") on or about August 6, 2010. This was over two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over one month after the 2010 Compromise Agreement.

g. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

52. **Model THDC-30T**. AeroSys distributed at least 26 units of space-constrained central air conditioner basic model THDC-30T between June 5, 2010, and March 17, 2011.

a. AeroSys distributed twelve units of this model to H.M. Sweeny Co., Inc. ("H.M. Sweeny") on or about June 23, 2010. This was almost three weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

b. AeroSys distributed two units of this model to Vair on or about June 30, 2010. This was after AeroSys filed its June 4, 2010 Notice of Discontinuance.

c. AeroSys distributed one unit of this model to Carrier on or about July 7, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost one week after the 2010 Compromise Agreement.

d. AeroSys distributed six units of this model to H.M. Sweeny on or about July 8, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and one week after the 2010 Compromise Agreement.

e. AeroSys distributed two units of this model to Hamilton on or about March 17, 2011. This was over nine months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost nine months after the 2010 Compromise Agreement.

f. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

53. **Model THDC-30TG**. AeroSys distributed at least nine units of space-constrained central air conditioner basic model THDC-30TG between June 5, 2010, and August 3, 2010.

a. AeroSys distributed two units of this model to LSKAir on or about June 9, 2010. This was five days after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

b. AeroSys distributed four units of this model to LSKAir on or about July 7, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost one week after the 2010 Compromise Agreement.

c. AeroSys distributed one unit of this model to Trible's on or about July 22, 2010. This was over one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost three weeks after the 2010 Compromise Agreement.

d. AeroSys distributed one unit of this model to ABCO on or about July 30, 2010. This was almost two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost one month after the 2010 Compromise Agreement.

e. AeroSys distributed one unit of this model to LSKAir on or about August 3, 2010. This was almost two months after AeroSys filed its June 4, 2010 Notice of Discontinuance and one month after the 2010 Compromise Agreement.

f. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

54. **Model THHP-18T**. AeroSys distributed at least three units of space-constrained central air conditioning heat pump basic model THHP-18T to HVAC Distributors, Inc. ("HVAC") on or about July 8, 2010. This was more than one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and seven days after the 2010 Compromise Agreement. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

55. **Model THHP-24R**. AeroSys distributed at least two units of space-constrained central air conditioning heat pump basic model THHP-24R to Johnstone on or about July 1, 2010. This was almost one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and the same day as the 2010 Compromise Agreement. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

56. **Model THHP-24S**. AeroSys distributed at least two units of space-constrained central air conditioning heat pump basic model THHP-24S between June 5, 2010, and March 11, 2011.

    a. AeroSys distributed one unit of this model to Southern on or about February 1, 2011. This was almost eight months after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and seven months after the 2010 Compromise Agreement.

    b. AeroSys distributed one unit of this model to Southern on or about March 11, 2011. This was more than nine months after AeroSys filed its June 4, 2010 Notice of Discontinuance and over eight months after the 2010 Compromise Agreement.

    c. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

57. **Model THHP-24T**. AeroSys distributed at least 20 units of space-constrained central air conditioning heat pump basic model THHP-24T between June 5, 2010, and February 25, 2011.

    a. AeroSys distributed one unit of this model to HVAC on or about June 11, 2010. This was one week after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed six units of this model to H.M. Sweeny on or about June 21, 2010. This was two weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance.

    c. AeroSys distributed seven units of this model to HVAC on or about July 8, 2010. This was more than one month after AeroSys filed its June 4, 2010 Notice of Discontinuance and one week after the 2010 Compromise Agreement.

    d. AeroSys distributed six units of this model to HVAC on or about February 25, 2011. This was almost nine months after AeroSys filed its June 4, 2010 Notice of Discontinuance and almost eight months after the 2010 Compromise Agreement.

    e. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

58. **Model THHP-30S**. AeroSys distributed three units of space-constrained central air conditioning heat pump basic model THHP-30S between June 5, 2010, and April 26, 2011.

    a. AeroSys distributed one unit of this model to Southern on or about June 15, 2010. This was less than two weeks after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model.

    b. AeroSys distributed one unit of this model to Southern on or about August 4, 2010, two months after filing its June 4, 2010 Notice of Discontinuance and also about one month after the 2010 Compromise Agreement.

c. AeroSys distributed one unit of this model to Northeastern on or about April 26, 2011. This was more than ten months after AeroSys filed its June 4, 2010 Notice of Discontinuance and the 2010 Compromise Agreement.

d. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

59. **Model THHP-30T**. AeroSys distributed ten units of space-constrained central air conditioning heat pump basic model THHP-30T to HVAC on or about July 8, 2010. This was more than one month after AeroSys filed its June 4, 2010 Notice of Discontinuance, which included this basic model, and seven days after the 2010 Compromise Agreement. As of the date of this last known sale, AeroSys had not submitted a valid certification report regarding this basic model as required by 10 C.F.R. § 429.12.

Violation 2: Distribution in Commerce without First Submitting a Certification Report

60. Over the course of the months following the signing the 2010 Compromise Agreement, AeroSys continued to sell units of the below listed basic models in U.S. commerce *before* submitting a certification report. The certification report for each model was submitted on the date indicated in the chart.

Model[35]	SEER	Date Distributed in Commerce	Date First Certification Report Submitted	Days Non-Compliant	Maximum Penalty[36]
THDC-18PGA	12	1/5/2011	5/18/2011	133	$26,600
THDC-18RGA	12	8/4/2010	1/21/2011	170	$34,000
THDC-18SGA	12	10/4/2010	1/21/2011	109	$21,800
THDC-18TGA	12	8/4/2010	1/21/2011	170	$34,000
THDC-24RGA	12	8/5/2010	1/21/2011	169	$33,800
THDC-30RGA	12	8/3/2010	1/21/2011	171	$34,200
THDC-30SGA	12	8/5/2010	1/21/2011	169	$33,800
THDC-30TGA	12	8/3/2010	4/22/2011	171	$34,200
THHP-18SGA	12	1/6/2012	1/23/2012	17	$3,400
THHP-18TGA	12	11/15/2011	1/23/2012	69	$13,800
THHP-24RGA	12	9/14/2010	Never	365	$73,000
THHP-24SGA	12	11/15/2011	1/23/2012	69	$13,800
THHP-24TGA	12	11/9/2011	12/9/2011	30	$6,000
THHP-30SGA	12	11/7/2011	1/23/2012	77	$15,400
Totals:				**1,889**	**$377,800**

[35] For all models listed in this table, the basic model numbers initially did not contain the "A" designation at the end of the number. In approximately October 2011, AeroSys added the "A" designation to these models to differentiate between the earlier 10.9 SEER versions of the models and the then-current 12 SEER version of the models.

[36] Each day of noncompliance constitutes a separate violation for each basic model at issue. Each violation is subject to a maximum penalty of $200 (two hundred dollars). 42 U.S.C. § 6303 and 10 C.F.R. § 429.120.

Violation 3: Submission of Certification Report without Accompanying Test Data

61. As discussed earlier, AeroSys routinely failed to provide the required test data underlying its certification of basic models after the 2010 Compromise Agreement. This was in direct violation of section V.2 of the 2010 Compromise Agreement.

62. It is a prohibited act for a manufacturer to fail "to provide… records required to be supplied under" EPCA and 10 C.F.R. Part 429. 10 C.F.R. § 429.102(a)(1). Under EPCA and DOE regulations, manufacturers are required to "submit information or reports [to DOE] with respect to efficiency [or] energy use when such information is requested." 42 U.S.C. § 6296(d)(1); *see also* 10 C.F.R. § 429.106(b) ("DOE may, at any time, request … the data underlying certification of a basic model.")

63. In the 2010 Compromise Agreement, AeroSys agreed it would not "certify any basic model without providing complete test data to DOE." See section V.2 of Exhibit 20. This constituted a request for data from DOE that AeroSys provide test data before or concurrent with any certification submission. AeroSys's failure to provide the requested data until after its attempt to certify its basic models constituted a prohibited act as described above under 10 C.F.R. § 429.102(a)(1).

64. According to 10 C.F.R. § 429.120, "For violations of § 429.102(a)(1), (3), and (4), each day of noncompliance shall constitute a separate violation for each basic model at issue." The maximum penalty is therefore $200 per day per basic model. The chart below summarizes the maximum penalty for AeroSys's repeated failure to comply with the 2010 Compromise Agreement by failing to provide test data when certifying each basic model.

Basic Model Number	Date Certification Submitted	Date Test Data Submitted	Days Non-Compliant	Maximum Penalty
THDC-18RG	1/21/11	10/12/11	264	$52,800
THDC-18SG	1/21/11	4/5/11	74	$14,800
THDC-18TG	1/21/11	2/23/11	33	$6,600
THDC-24RG	1/21/11	4/5/11	74	$14,800
THDC-24SG	7/23/10	8/6/10	14	$2,800
THDC-24TG	7/23/10	8/6/10	14	$2,800
THDC-30RG	1/21/11	4/5/11	74	$14,800
THDC-30SG	1/21/11	2/23/11	33	$6,600
THDC-30TG	4/22/11	10/12/11	173	$34,600
THDC-18TGA	1/20/12	2/2/12	13	$2,600
THDC-24PGA	2/5/12	2/7/12	2	$400
THDC-24SGA	2/5/12	2/6/12	1	$200
THDC-24TGA	2/1/12	2/2/12	1	$200
THDC-30PGA	2/8/12	2/9/12	1	$200
THDC-30RGA	1/26/12	2/2/12	7	$1,400
THDC-30SGA	2/1/12	2/2/12	1	$200

Basic Model Number	Date Certification Submitted	Date Test Data Submitted	Days Non-Compliant	Maximum Penalty
THDC-30TGA	1/20/12	2/2/12	13	$2,600
THHP-18SGA	1/23/12	*9/5/12*[37]	226	$45,200
THHP-18TGA	1/23/12	3/6/12	43	$8,600
THHP-24SGA	1/23/12	3/1/12	38	$7,600
THHP-24TGA	12/9/11	2/2/12	55	$11,000
THHP-30SGA	1/23/12	2/2/12	10	$2,000
THHP-30TGA	1/22/12	2/2/12	11	$2,200
THHP-30TG	10/13/11	2/2/12	112	$22,400
Totals:			**1,287**	**$257,400**

Violation 4: Distribution of Models after Notice of Noncompliance Determination Issued

65. It is a prohibited act for a manufacturer to distribute "in commerce ... a basic model of covered product ... after a notice of noncompliance determination has been issued to the manufacturer." 10 C.F.R. § 429.102(a)(7).

66. As explained in Paragraph 20 above, on March 25, 2010 and April 13, 2010, DOE issued AeroSys Notices of Noncompliance Determination, informing AeroSys that the results of DOE testing of three basic models of AeroSys space-constrained products, basic models THHP-24TG, THDC-30TG, and THDC-24SG, indicated that these models were not compliant with the 10.9 SEER energy conservation standard applicable at the time the units were manufactured. (See Exhibits 18 and 19.)

67. AeroSys shipped one unit of space-constrained central air conditioner basic model THDC-24SG to LSKAir on April 22, 2010—nine days after DOE issued the 2010 NND. (Exhibit 73.) The serial number of this unit (A12GX4S104)[38] indicates that this unit was a 10.9 SEER model and, as such, was the same basic model that was determined by DOE to be noncompliant with the applicable energy conservation standard.

68. AeroSys shipped two units of space-constrained central air conditioner basic model THDC-30TG to LSKAir on June 9, 2010—almost two months after DOE issued the 2010 NND. (Exhibit 74.) The serial numbers of these units (both beginning with 940GD4T) indicate that these units were a 10.9 SEER model and, as such, were the same basic model that was determined by DOE to be noncompliant with the applicable energy conservation standard.

69. AeroSys shipped four units of space-constrained central air conditioner basic model THDC-30TG to LSKAir on July 7, 2010—almost three months after DOE issued the 2010 NND. (Exhibit 76.) The serial numbers of these units (each beginning with 940GD5T) indicate that these units were 10.9 SEER models and, as such, were the same

[37] This is the date this model was discontinued rather than the date test data was submitted. As described earlier, AeroSys never submitted test data for this model to DOE.

[38] AeroSys provided DOE with a rubric to determine the approximate build date of any unit of its products based on the serial number of the unit. AeroSys also provided the first build date for its 12 SEER models. With this information, DOE ostensibly can determine the rated SEER value of any unit for which it has the serial number.

basic model that was determined by DOE to be noncompliant with the applicable energy conservation standard.

70. AeroSys shipped one unit of space-constrained central air conditioner basic model THDC-30TG to Trible's on July 23, 2010—more than three months after DOE issued the 2010 NND. (Exhibit 75.) The serial number of this unit (940GD5T149) indicates that this unit was a 10.9 SEER model and, as such, was the same basic model that was determined by DOE to be noncompliant with the applicable energy conservation standard.

71. AeroSys shipped four units of space-constrained central air conditioner basic model THDC-30TG to LSKAir on August 3, 2010—almost four months after DOE issued the 2010 NND. (Exhibit 77.) The serial numbers of these units (each beginning with 940GD5T) indicate that these units were 10.9 SEER models and, as such, were the same basic model that was determined by DOE to be noncompliant with the applicable energy conservation standard.

72. Pursuant to 10 C.F.R. § 429.120, each unit of a covered product distributed in violation of 10 C.F.R. § 429.102(a)(7) constitutes a separate violation. The maximum penalty is therefore $200 per unit distributed in commerce. The chart below summarizes the maximum penalty imposable for AeroSys's distribution of units of models previously determined by DOE to be noncompliant with the applicable standard.

Basic Model Number	Sold to	Number of Units	Maximum Penalty	Distribution Date
THDC-24SG	LSKAir	1	$200	4/22/2010
THDC-30TG	LSKAir	2	$400	6/9/2010
THDC-30TG	LSKAir	4	$800	7/7/2010
THDC-30TG	Trible's	1	$200	7/23/2010
THDC-30TG	LSKAir	4	$800	8/3/2010
Totals:		**12**	**$2,400**	

Violation 5: Manufacture and Distribution of Models Not Compliant With the Applicable Energy Conservation Standard

73. It is a prohibited act for a manufacturer to distribute "in commerce ... any new covered product ... that is not in compliance with the applicable energy conservation standard." 10 C.F.R. § 429.102(a)(6).

74. According to AeroSys's subpoena response, the company began manufacturing its 12 SEER Pygmy or "P" series basic models of space constrained air conditioners (i.e., basic models THDC-18PGA, THDC-24PGA, and THDC-30PGA) in May 2011.[39]

[39] In a subsequent email dated May 3, 2013, AeroSys counsel indicated that the first build date for the "P" models was in January 2011. This unexplained change in dates has no effect on DOE's determination that AeroSys manufactured and distributed noncompliant 10.9 SEER "P" models.

75. Based on copies of AeroSys invoices provided in response to DOE subpoenas of AeroSys distributors (Exhibit 78), AeroSys sold at least 19 units of 10.9 SEER "P" basic models (including THDC-18PG, THDC-24PG, and THDC-30PG basic models) during or after June 2010. Based on the serial numbers of the units provided on the AeroSys invoices, DOE determined that these 10.9 SEER units were manufactured after the applicable 12 SEER standard became effective on January 23, 2010. Further, eighteen of these 10.9 SEER units were built before AeroSys began manufacturing the 12 SEER "P" models.[40]

76. Pursuant to 10 C.F.R. § 429.120, each unit of a covered product distributed in violation of 10 C.F.R. § 429.102(a)(6) constitutes a separate violation. The maximum penalty is therefore $200 per unit distributed in commerce. The chart below summarizes the maximum penalty imposable for AeroSys's manufacture and distribution of units of noncompliant 10.9 SEER "P" basic models.

Basic Model Number	Sold to	Number of Units	Maximum Penalty	Manufacture Date	Distribution Date
THDC-24PG	ABCO	1	$200	June 2010	June 2010
THDC-18PG	ABCO	1	$200	June 2010	June 2010
THDC-24PG	ABCO	1	$200	June 2010	June 2010
THDC-30PG	ABCO	2	$400	June 2010	June 2010
THDC-18PG	ABCO	2	$400	June 2010	June 2010
THDC-30PG	ABCO	2	$400	June 2010	June 2010
THDC-30PG	LSKAir	2	$400	June 2010	June 2010
THDC-24PG	ABCO	3	$600	June 2010	June 2010
THDC-18PG	LSKAir	2	$400	June 2010	June 2010
THDC-24PG	LSKAir	2	$400	June 2010	June 2010
THDC-24PG	LSKAir	1	$200	January 2011	May 2011
Totals:		**19**	**$3,800**		

Aggravating Factor: Distribution of Products AeroSys Claimed It Did Not Have

77. AeroSys sold well over 800 units of R-22 models of space-constrained central air conditioners and air conditioning heat pumps after informing DOE that it did not have enough units of these models to respond adequately to a Test Notice, and that it could not obtain the required components to build these models.

78. In the course of monitoring and investigating AeroSys's compliance with the compromise agreement, DOE discovered that AeroSys had provided inaccurate information to DOE during the test notice process initiated in September of 2009.

[40] The remaining unit was manufactured after AeroSys has indicated that it began manufacturing the 12 SEER version of the "P" models, but this unit was described by AeroSys on its invoice as "10.9 SEER."

79. In the Test Notice on September 24, 2009, DOE requested AeroSys provide units of basic model numbers THDC-18R, THDC-18S, THDC-18T, THDC-24S, THDC-24T, THDC-24TG, THDC-30T, and THHP-24T for enforcement testing. (See Exhibit 10)

80. In an email from AeroSys to DOE dated October 2, 2009, AeroSys stated, "Our compressor manufacturer, Emerson (Copeland), stopped accepting orders for any R-22 compressors after October 1, 2009; stopped carrying significant inventory for these systems in August. We do not have parts to build enough R-22 systems; we have stopped stocking the parts to build more." (Exhibit 79.) AeroSys further claimed they did not have sufficient stock of any of these models to meet the 20 unit requirement[41] in the test notice.

81. On October 5, 2009, DOE agreed to allow AeroSys to substitute models that used R-410A refrigerant instead of R-22. DOE stated, "Just to recap, it's our understanding, based on the conversation that Dr. Raymond had with Mr. Garrett earlier this morning, that AeroSys does not have any R-22 units in-hand. Because of that situation, the use of R-410 units in place of the R-22 units that we requested in our test notice is acceptable." (Exhibit 80.)

82. On October 6, 2009, AeroSys's counsel sent an email to "clarify" the "inventory of R-22 units." (Exhibit 81.) He explained, "AeroSys does not have any R-22s for some of the models listed in the test notice. It does have some remaining R-22s on hand for some of the listed models, but in most cases only a few, and it does not have the parts on hand to build more R-22 units."

83. In an email dated October 7, 2009, from DOE to AeroSys's counsel, DOE indicated its continuing desire to test models that used R-22 refrigerant if enough units existed to perform enforcement testing. DOE asked for an accounting of the R-22 models AeroSys had in stock at that time, noting that DOE required at least four units for enforcement testing purposes. (Exhibit 82.) After not receiving a response to this request, DOE reiterated its request for an accounting of AeroSys's stock of models that used R-22 refrigerant in an email to AeroSys counsel dated October 13, 2009. (Exhibit 83.)

84. In that same email exchange on October 13, 2009, AeroSys counsel replied to DOE, and stated that it had misinterpreted AeroSys's internal statement regarding the number of models it had in stock. AeroSys counsel stated, "I now understand that AeroSys is maintaining no R-22 units." (See Exhibit 83.)

85. On October 14, 2009, DOE sent a letter to AeroSys acknowledging its agreement to substitute models that used R-410A refrigerant for the initially selected models that used R-22 refrigerant. This agreement was based on AeroSys's claim that it did not have any units that used R-22 refrigerant in stock and could not build more. (Exhibit 84.) DOE

[41] For most covered products, DOE requires a four-unit sample to complete enforcement testing. In most cases, four sets of test results provides a statistically significant sample size to make a determination of whether the model complies with the applicable energy conservation standard. *See* Appendix A to Subpart C of 10 C.F.R. Part 429. In some cases, however, the results of testing of the first four units yields an indeterminate result under the statistical sampling provisions, requiring testing of additional units. For that reason, DOE's Test Notice provided that AeroSys should maintain an additional 16 units (for a total of 20 units) to ensure enough available units to complete enforcement testing.

instead requested units of basic model numbers THDC-18RG, THDC-18SG, THDC-18TG, THDC-24SG, THDC-24TG, THDC-30TG, and THHP-24TG for testing.

86. Based on information on unit sales provided to DOE from AeroSys listing all sales of R-22 models between January 1, 2000, and December 31, 2012 (Exhibit 85), it is clear that after September 24, 2009, AeroSys sold a significant number of units of the very same models with R-22 refrigerant that AeroSys informed DOE they no longer had in stock and could not and would no longer manufacture. The table below provides a list of the number of units of these specific R-22 models that were sold after DOE sent AeroSys the Test Notice on September 24, 2009.

Number of units of R-22 Models Sold after 9/24/2009	
Model	Number Sold
THDC-18R	1
THDC-18S	66
THDC-18T	163
THDC-24S	141
THDC-24T	440
THDC-30T	26
THHP-24T	20
Total:	857

87. As indicated in the above table, AeroSys sold well over 800 units of R-22 models of space-constrained central air conditioners and air conditioning heat pumps after informing DOE that it did not have enough units of these models to respond adequately to the September 24, 2009 Test Notice, and that it could not obtain the required components to build these models. AeroSys misrepresented its inventory of R-22 models, continuing to build and sell units of these models while avoiding having the models' actual performance tested. Further, the THDC-18S, THDC-18T, THDC-24S, and THDC-24T models were later tested by DOE and determined to be noncompliant with applicable energy conservation standards.[42] AeroSys's focus on liquidating its stock without concern for its obligation to comply with the law and to provide truthful, accurate information in response to a regulatory request presents substantial aggravation when considering the range of penalties AeroSys should pay for its continued noncompliance.

[42] While negotiating the terms of 2010 Compromise Agreement, AeroSys informed DOE they had sufficient stock or could buy back units of these four specific R-22 models so that DOE and AeroSys could test two units of each model. DOE was not then aware, however, that AeroSys had sold hundreds of units of these four models in the time since they had informed DOE they did not have sufficient units in stock to meet the test notice requirements.

Penalty

88. DOE has made clear that penalties will be based upon the facts and circumstances of a particular case and that aggravating circumstances may warrant significant penalties. *See Guidance on the Imposition of Civil Penalties for Violations of EPCA Conservation Standards and Certification Obligations*, 4-7 (May 7, 2010). (Exhibit 86.) Specifically, the basic penalty cap of $500,000 for cases of certification violations may be exceeded in aggravating circumstances. *Id.* In this case, aggravating circumstances include:

    a. AeroSys's willful disregard for its regulatory obligations to certify its products in accordance with DOE rules in spite of settling a previous case involving similar violations and committing, as part of the settlement, to full compliance with these regulations.

    b. AeroSys made inaccurate statements to DOE when it represented that it did not have models in stock in response to a DOE Test Notice, but continued to distribute hundreds of these same models for almost two years thereafter.

    c. AeroSys sold models it had notified DOE were discontinued, including models that DOE had specifically found not to comply with the energy conservation standard in effect at the time they were manufactured.

89. Given the aggravating circumstances described above, DOE has determined that the proposed civil penalty amount in this case should be $1,145,600. DOE determined this amount by starting with the maximum penalty amount of $1,406,400 (derived as provided in the five pertinent tables above) and subtracting the calculated penalties for violations for less than 30 days for two of the five violations: distribution in commerce without first submitting a certification report and submission of a certification report without accompanying test data. *See* 42 U.S.C. § 6303(a) and 10 C.F.R. § 429.120.

The following information is provided in question and answer format to help explain AeroSys's legal obligations and options.

What are my options?

Within thirty (30) calendar days, you must select Option 1 or Option 2 below if you do ***not*** agree to DOE's settlement offer.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts de novo.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (ALJ) for an agency hearing on the record. Upon issuance of a decision by the ALJ recommending civil penalties, DOE will adopt, modify, or set aside the conclusions of law or discretion contained in the ALJ's recommended decision and shall set forth a final order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By Email to: david.case@hq.doe.gov

By Fax to: (202) 586-3274

By Mail to: David W. Case
U.S. Department of Energy
Office of the General Counsel (GC-32)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2 above).

What should I include in my response?

1) If you wish to accept DOE's settlement offer, you should submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.

2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act (DCIA) requires all Federal agencies to obtain the TIN in any case which may give rise to a debt to the government.

3) **To avoid additional liability, you should also immediately ensure all covered products have been tested in accordance with DOE test procedures and sampling plans and that all basic models meet the applicable federal conservation standards.**

How did DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted to DOE a valid certification of the basic model as compliant with applicable energy efficiency standards. In the maximum

penalty calculation in this notice, DOE calculated the number of days after AeroSys notified DOE that the model was discontinued, beginning at the date of the Notice of Discontinuance, with violations accruing for each basic model through the date of the most recent sale as provided by AeroSys and the distributors in response to the DOE subpoenas. The maximum penalty is $200 per day. *See* 10 C.F.R. § 429.120.

Federal law also sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty, as described in 10 C.F.R. at § 429.120, is $200 per unit.

Issued by:

Anne Harkavy
Deputy General Counsel for
Litigation and Enforcement